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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MICHIKO SHIOTA GINGERY et al.,

Plaintiffs and Appellants

v.

CITY OF GLENDALE,

Defendant and Respondent.

B264209

(Los Angeles County
Super. Ct. No. BC556600)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Blecher Collins Pepperman and Joye, Maxwell M. Blecher, Donald R. Pepperman, Taylor C. Wagniere, Law Offices of Ronald S. Barak, Ronald Barak for Plaintiffs and Appellants.

Glendale City Attorney's Office, Michael J. Garcia, Ann M. Maurer, Andrew Rawcliffe, Sidley Austin LLP, Bradley H. Ellis, Christopher S. Munsey, Adam P. Micale for Defendant and Respondent City of Glendale.

I. INTRODUCTION

Plaintiffs, Michiko Shiota Gingery (Ms. Gingery), Koichi Mera (Mr. Mera), Masatoshi Naoki and GAHT-US Corporation, sued defendant City of Glendale after it approved and installed a Comfort Women monument in a city park. On appeal, plaintiffs Mera, Naoki and GAHT-US Corporation challenge the May 5, 2015 judgment, which dismissed their second amended complaint in its entirety. The judgment followed a March 13, 2015, order granting defendant's special motion to strike pursuant to Code of Civil Procedure¹ section 425.16. Plaintiffs argue their action is not subject to section 425.16 because it falls under the public interest exception of section 425.17, subdivision (b). But the public interest exception is inapplicable. The Comfort Women monument is a political work that is exempt from the public interest exception under section 425.17, subdivision (d)(2).

Plaintiffs also challenge the order granting the special motion to strike the second amended complaint under section 425.16. They contend the action is not subject to section 425.16 because it does not arise from protected speech and petitioning activity. Not so. Defendant's approval and installation of the Comfort Women monument are protected activities under section 425.16, subdivisions (e)(3) and (e)(4). Further, plaintiffs contend they satisfy the minimal merit standard under the second prong of section 425.16. We disagree. We conclude plaintiffs have not established a probability of prevailing on their causes of action. Finally, plaintiffs assert the trial court violated their due process rights and demonstrated judicial bias at the hearing and in the

¹ Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

ruling on the section 45.16 motion. We find no due process violation or judicial bias. We affirm the judgment.

II. BACKGROUND

A. Second Amended Complaint

Plaintiff GAHT-US Corporation is a California non-profit public benefit corporation with nearly 500 members. GAHT-US Corporation provides educational resources to the public concerning the history of World War II with an emphasis on Japan's role. One of the individual plaintiffs, Mr. Mera, is a Japanese-American resident of the City of Los Angeles and the president of GAHT-US Corporation. The other individual plaintiffs, Ms. Gingery and Mr. Naoki, are Japanese American residents of Glendale.

On September 3, 2014, plaintiffs filed a complaint for declaratory and injunctive relief. On September 18, 2014, plaintiffs filed a first amended complaint. On October 22, 2014, plaintiffs filed a seconded amended complaint after their motion for leave to amend was granted. The second amended complaint seeks declaratory and injunctive relief for: unconstitutional interference with foreign affairs power; violation of defendant's Municipal Code; and violations of the equal protection clause and privileges and immunities clause of the California Constitution.

On March 26, 2013, the city council approved a motion to dedicate a plot of land at Central Park for sister city related monuments and memorials. At a July 9, 2013 special meeting, the city council approved the installation of a public monument, described as "a Korean Sister City 'Comfort Woman's Peace Monument.'" The report submitted to the city council included a schematic diagram of the proposed statue and its location. The schematic diagram did not include the text of the plaque that is

part of the monument. Numerous individuals, including Mr. Mera and members of GAHT-US Corporation, objected to the proposed installation of the monument. They argued the comfort women issue was a subject of diplomatic discussions between South Korea and Japan and an element of the United States' foreign relations with these countries.

On July 30, 2013, the public monument was unveiled at a public ceremony in Central Park. The public monument is a 1,100-pound bronze statue of a young girl in Korean dress sitting next to an empty chair with a bird perched on her shoulder. The statue is accompanied by a permanent bronze plaque.

The text of the monument's plaque states: "I was a sex slave of Japanese military [¶] Torn hair symbolizes the girl being snatched from her home by the Imperial Japanese Army. [¶] Tight fists represent the girl's firm resolve for a deliverance of justice. [¶] Bare and unsettled feet represent having been abandoned by the cold and unsympathetic world. [¶] Bird on the girl's shoulder symbolizes a bond between us and the deceased victims. [¶] Empty chair symbolizes survivors who are dying of old age without having yet witnessed justice. [¶] Shadow of the girl is that of an old grandma, symbolizing passage of time spent in silence. [¶] Butterfly in shadow represents hope that victims may resurrect one day to receive their apology. [¶] Peace Monument [¶] In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945. [¶] And in celebration of proclamation of 'Comfort Women Day' by the City of Glendale on July 30, 2012, and of passing of

House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibilities for these crimes. [¶] It is our sincere hope that these unconscionable violations of human rights shall never recur. [¶] July 30, 2013.”

The public monument is adjacent to the Adult Recreation Center Plaza in Central Park. The adult recreation center provides: senior citizen programs and reduced-priced meals; health screenings and wellness programs; housing and legal assistance; classes; travel and volunteer opportunities; recreational activities; and special events. Plaintiffs, including GAHT-US Corporation members, are long-time residents of Glendale who would like to use the Central Park adult recreation center. But plaintiffs avoid the center because they feel offended and alienated by the public monument’s expressed disapproval of Japan and Japanese people. Plaintiffs assert the presence of the public monument diminishes their enjoyment of the Central Park adult recreation center.

Plaintiffs allege four causes of action. The first cause of action is for unconstitutional interference with the federal government’s foreign affairs power. Plaintiffs claim defendant’s approval and installation of the public monument constitute a foreign policy transaction that falls under the foreign affairs field preemption. They allege defendant’s actions intrude on the federal government’s exclusive power to conduct and regulate foreign affairs. Plaintiffs assert by taking a side in the international debate over the comfort women issue, defendant impermissibly interferes with the federal government’s foreign relations with Japan . They contend defendant’s actions are in

conflict with federal constitutional law and not protected by free speech principles.

The second cause of action is for violation of the Glendale Municipal Code. Plaintiffs allege the public monument was not properly approved by the city council pursuant to Glendale Municipal Code section 2.04.140. They assert the report that recommended approval of the public monument did not reference the text of the plaque. Plaintiffs allege the inscription on the plaque was different than what the city council was told would be on the plaque. Thus, the city council did not propose nor vote to approve the text on the plaque. Plaintiffs claim the city council's failure to approve the plaque's language violates the Glendale Municipal Code. -

The third cause of action is for violation of the equal protection clause of the California Constitution. Plaintiffs allege defendant, by placing the public monument adjacent to the adult recreation center, denies them equal protection of the laws. The second amended complaint states: "(a) [T]he Public Monument expressly and impliedly disapproves of individuals of Japanese origin and descent by wrongly accusing the Japanese nation of 'coercing' women into sexual slavery (a matter of international debate), and publicly 'celebrating' a bill that demands that the Japanese nation 'take historical responsibility' for actions which the Japanese, including Plaintiffs, believe the government is falsely accused of, thereby adopting anti-Japanese stance, while ignoring the wartime suffering and patriotism of Japanese-Americans, resulting in the alienation of Glendale's Japanese-American population; (b) to the extent the Public Monument honors Glendale's Korean sister city, no public monument exists in the Sister City area of Central Park that

honors any of Glendale's sister cities in Japan, Mexico, and Armenia and none of the other sister cities were consulted by Glendale prior to its decision to erect the Public Monument; and (c) the Public Monument interferes with the Plaintiffs' use and enjoyment of Glendale's Central Park and Glendale's Adult Recreation Center[;] and (d) the Public Monument discourages Plaintiffs Gingery, Mera and Naoki from equal and unfettered access to public services and benefits that are offered only at the Adult Recreation Center."

The fourth cause of action is for violation of the privileges and immunities clause of the California Constitution. Plaintiffs allege the public monument's placement, adjacent to the adult recreation center, denies Japanese American citizens the privileges and immunities on the same terms as non-Japanese citizens. The second amended complaint alleges: "(a) [T]he Public Monument expressly and impliedly expresses disapproval of individuals of Japanese origin and descent by [publicly] demanding that the Japanese nation 'take historical responsibility . . . for unconscionable violations of human rights . . .', thereby adopting an anti-Japanese stance, while ignoring the wartime suffering and patriotism of Japanese-Americans, resulting in alienation of Glendale's Japanese-American population; (b) to the extent the Public Monument honors Glendale's Korean sister city, no public monument exists in the Sister City area of Central Park that honors any of Glendale's sister cities in Japan, Mexico, and Armenia and none of the other sister cities were consulted by Glendale prior to its decision to erect the Public Monument; (c) the Public Monument interferes with the Plaintiffs' use and enjoyment of Glendale's Central Park and Glendale's Adult Recreation Center, and (d) the Public

Monument discourages Plaintiffs Gingery, Mera and Naoki from equal and unfettered access to public services and benefits that are offered only at the Adult Recreation Center.”

B. Defendant’s Special Motion to Strike

On January 15, 2016, defendant moved to strike the second amended complaint pursuant to section 425.16. Defendant argued section 425.16, subdivisions (e)(1) through (e)(4) applied because the lawsuit arose from acts in furtherance of its free speech rights. Further, defendant contended plaintiffs cannot meet their burden of establishing a probability of prevailing on their claims.

In opposition, plaintiffs argued their public interest lawsuit fell within section 425.17, subdivision (b) and thus was exempted from the special motion to strike. In the alternative, plaintiffs contended defendant did not meet its burden of showing it engaged in protected activity. Further, plaintiffs asserted the plaque is not covered by section 425.16, subdivision (e) because the plaque’s content was never approved by the city council. Plaintiffs argued the plaque cannot be considered as speech because the city council never saw or approved its content under the Municipal Code. In addition, plaintiffs contended the special motion to strike must be denied because their claims have at least minimal merit. Plaintiffs argued defendant’s actions were preempted by the federal government’s foreign affairs power under the supremacy clause. Concerning the Equal Protection Claim, plaintiffs argued the plaque’s language treated people of Japanese heritage differently than other people wanting to use Central Park. Further, plaintiffs asserted the public monument and its plaque singled out Japanese-Americans and offended, alienated and humiliated them. Likewise, the individual

plaintiffs claimed they were denied the same privileges and immunities as other citizens because the monument and plaque portrayed a clear anti-Japanese stance. Finally, plaintiffs argued defendant violated Municipal Code section 2.04.140 because the city council did not follow procedural rules pursuant to the Robert's Rules of Order. Plaintiffs contended since the city council did not review or approve the plaque's language, it failed to comply with Robert's Rules of Order.

In support of their opposition to defendant's special motion to strike, plaintiffs submitted declarations from Ms. Gingery, Mr. Naoki and Mr. Mera. Ms. Gingery is a Japanese-American who has lived in Glendale since 1963. Since 1970, Ms. Gingery has hosted Japanese visitors in her home and done volunteer work to further Glendale's sister city relationship with Higashiosaka City. In 2014, she became a founding member of plaintiff GAHT-US Corporation. Ms. Gingery states, "I would like to make use of the Central Park and its facilities, but I no longer feel comfortable or welcome there because of the presence of the Public Monument therein, including the Plaque in particular. I feel that the Public Monument presents a one-sided, biased view on a sensitive subject of World War II and is detrimental to the constructive relationships and understandings between the American and Japanese people, particularly between the peoples of Higashiosaka City and Glendale. I also feel the Public Monument discriminates against me and other individuals of Japanese ancestry, unfairly associating us with war crimes, human rights violations and sexual assault, abuse and slavery. I feel offended, alienated, humiliated and saddened by the Public Monument."

Mr. Naoki is a Japanese American resident of Glendale. Beginning in 2001, he and Ms. Gingery hosted Higashiosaka City officials and youth basketball teams when they visited Glendale. Mr. Naoki attended the July 9, 2013 city council meeting. Mr. Naoki states, "During the Meeting, a schematic diagram depicting the proposed Monument statue 'commemorating' Comfort Women, including its proposed location in the Glendale Central Park, was presented to the City Council and attending public by Glendale City staff. In response to an inquiry an inquiry from City Councilman Ara Najarian as to what language would appear on the plaque that is part of the Monument ('Plaque'), City staff member Dan Bell said it would just be some 'general language commemorating comfort women.'" Mr. Naoki believes the monument has singled out him and other individuals of Japanese ancestry by associating them with war crimes, human rights violations, sexual assault, abuse and slavery. He and his wife were frequent visitors of Central Park but have avoided the city park since the monument's installation. Mr. Naoki and his wife would like to use Central Park and the adult recreation center and would resume doing so if the monument were removed.

Mr. Mera is a Japanese American resident of Los Angeles who is the chief executive officer of plaintiff GAHT-US Corporation. Mr. Mera attended the city council special meeting on July 9, 2013. He observed a schematic diagram of the proposed statue was presented to the city council but not the specific language that ultimately appeared on the plaque. Mr. Mera reported many members of the public voiced opposition to the Comfort Women monument at the meeting. Mr. Mera states in response, city councilmember Frank Quintero told the

audience, “[You do not know your own history.” Mr. Mera finds the language inscribed on the plaque highly offensive to anyone of Japanese ancestry. Mr. Mera would like to make use of Glendale’s Central Park and its adult recreation center but avoids the area because of the monument’s presence. Attached to Mr. Mera’s declaration is a DVD containing a video record of the July 19, 2013 city council meeting, which was judicially noticed by the trial court.

Plaintiffs also submitted an October 1, 2013, letter from the city’s then mayor, Dave Weaver, to Mayor Noda of Higashiosaka, Japan. This letter was judicially noticed by the trial court. Mayor Weaver’s letter states in part: “I would like you to know my personal feelings about the ‘Comfort Women Statue’. On television, I stated that I would not vote for the statue until the City developed a master plan for Central Park. To representatives of the Japanese news media, both the press and television I added additional reasons that I would have had to state if I thought I had any chance of persuading my colleagues to change their vote. One reason is that I believe this matter is an international one between Japan and South Korea and the City of Glendale should not be involved on either side. Another reason is because this statue was being placed in a public park, not a private piece of property.”

C. Trial Court Ruling

On February 23, 2015, the trial court held a hearing on defendant’s special motion to strike pursuant to section 425.16. At the outset of the hearing, the trial court informed the parties, “I’ll just indicate, the court has actually seen the statue itself, both prior to the case I’ve been aware of the statue as to the – I believe it’s Central Park, Glendale, more or less Brand and

Colorado.” Later in the hearing, the trial court showed the parties another plaque located in another city park on a courtroom screen. The trial court stated: “Let me show you another plaque the court [has] uncovered itself recently. Tell me your thoughts on this. [¶ . . . ¶] This is a plaque that sits out in Grand Park. It’s 50 meters from the courthouse, between our courthouse and the Hall of Administration. It says: ‘In memory of the seven million Ukrainians, victims of Russian Communism who lost their freedom, property and life by order of the Soviet Government from 1932 to 1933. Genocide by starvation in the Ukraine,’ and it was put up by, apparently, the Board of Supervisors. And it sits out there. [¶] Would this be an equally unconstitutional plaque?” After oral argument, the trial court adopted its tentative order and granted defendant’s motion to strike the complaint.

The February 23, 2015 order states: “There can be no legitimate dispute that the Japanese government engaged in a horrendous crimes against the Comfort Women prior to and during World War II. The United States House of Representatives—and even the Japanese government itself—has recognized these abuses. Even Plaintiffs themselves do not dispute this historical truth. [¶ . . . ¶] Cities and states have routinely—and historically—passed resolutions in support [of], or in opposition to, various foreign policy issues. . . . [¶] If plaintiffs’ argument were correct, then such historically routine activities undertaken by state and local governments throughout the Country would all be unconstitutional. There is no constitutional difference between the monument and plaque at issue in this lawsuit and a proclamation by the City with the same wording.”

The trial court rejected plaintiffs' contention that the action was exempted from section 425.16. The trial court found section 425.17, subdivision (b) was inapplicable because plaintiffs' action was based on the creation, exhibition and promotion of a political work. Next, the trial court found defendant was engaged in protected activity under section 425.16 subdivisions (e)(1) through (e)(4).

In addition, the trial court ruled plaintiffs did not meet their burden of showing a probability of prevailing on their four causes of action. The trial court found plaintiffs did not establish a probability of prevailing on the first cause of action for unconstitutional interference with foreign affairs power. The trial court adopted the federal district court's analysis of the foreign affairs preemption claim. The trial court found: "Plaintiffs' Complaint provides no well-pleaded allegations of the required 'clear conflict' between the federal government's foreign relations policies concerning recognition of the plight of the Comfort Women and Glendale's placement of the monument in its Central Park. . . . [¶] Any contrary conclusion would invite unwarranted judicial involvement in the myriad symbolic displays and public policy issues that have some tangential relationship to foreign affairs." The trial court added, "Plaintiffs provide no authority which has held that purely expressive conduct, such as the placement of a monument and plaque intrudes upon the federal government's exclusive power to conduct and regulate foreign affairs."

The trial court also found plaintiffs could not prevail on the second cause of action because defendant did not violate the Glendale Municipal Code. The trial court reasoned: "Defendant provides evidence that defendant's City Council did comply with

Robert's Rules of Order in approving the monument. . . . However, plaintiffs' evidence suggests that the contents of the plaque were not discussed or known to council members prior to approval of the monument. . . . But the council later voted to defend the instant lawsuit There is no showing that the council members were unaware of the contents of the plaque, at that time, and their decision to defend the monument and plaque can only be viewed as approval of its contents."

Further, the trial court ruled plaintiffs did not show a probability of prevailing on their causes of action for violations of the state equal protection and privileges and immunities clauses. The trial court stated: "The monument and plaque do not create a classification that singles out Japanese persons. Though the plaque refers to the Japanese military, the Imperial Japanese Army, and the Government of Japan, it also states that it is dedicated to the memory of all comfort women, including women from Japan. . . . Plaintiffs are not alleged to be members of the Japanese armed forces. Further, being a member of the Imperial Japanese Army during World War II is not a suspect classification to which the Equal Protection Clause would apply." The trial court added, "The fact that plaintiffs and others find the message of the monument offensive is not sufficient, by itself, to support an equal protection claim. . . . [¶] Moreover, plaintiffs do not point to sufficient evidence that discrimination was a substantial motivating factor in defendant's decision. At most, plaintiffs show that defendant was aware that people of Japanese descent would be upset by the monument and that the monument would be controversial. . . . There is no indication that the statement by Councilmember Quintero that certain persons present at the meeting discussing the monument 'do not know

your own history,’ was motivated by discrimination against person of Japanese descent. . . . Further, a review of the video of the meeting suggests that most of the council members expressed a lack of discriminatory intent with regard to persons of Japanese origin.”

III. DISCUSSION

A. Section 425.17 is Inapplicable Because Monument is Political Work

Plaintiffs assert section 425.16 is inapplicable because their action falls under the public interest exception of section 425.17, subdivision (b). Section 425.17, subdivision (b) provides: “Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist: [¶] (1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney’s fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision. [¶] (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. [¶] (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff’s stake in the matter.” (*The Inland Oversight Committee v. County of San Bernardino* (2015) 239 Cal.App.4th 671, 676; *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1458-1459.) Section 425.17, subdivision (b) is a statutory exception that is narrowly construed, lest it swallow the rule in section 425.16. (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 22; *Club*

Members for an Honest Election v. Sierra Club (2008) 45 Cal.4th 309, 319.)

Furthermore, section 425.17, subdivision (d) limits the public interest exception in subdivision (b). In particular, section 425.17, subdivision (d)(2) states: “Subdivisions (b) and (c) do not apply to any of the following: [¶] . . . [¶] (2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political or artistic work, including, but not limited to, a motion picture or television program, or any article published in a newspaper or magazine of general circulation.”

Plaintiffs argue the trial court erred in ruling section 425.17 did not apply because the monument is a political work. They contend the monument is not defendant’s work because the statue and plaque were fashioned by a third party. Contrary to plaintiffs’ assertion, the exception in section 425.17, subdivision (d)(2) is not limited to works created by defendant. In *Major v. Silna*, the appellate court defined “work” as something produced by effort, exertion, or exercise of skill or creative talent. (*Major v. Silna* (2005) 134 Cal.App.4th 1485, 1494.) Section 425.17, subdivision (d)(2) exempts from the public interest exception “[a]ny action against any . . . entity based upon the creation, . . . exhibition, . . . or other similar promotion of any . . . political or artistic work.” The provision expressly applies to both the creation and exhibition of political work. Plaintiffs acknowledge the monument is political in nature. The second amended complaint alleges, “Glendale’s Public Monument is intended to send a political message on a distinct point of view regarding a matter of foreign policy.”

Plaintiffs further argue section 425.17, subdivision (d)(2) is limited to personal works of the kind subject to copyright protection. Not so. Section 425.17, subdivision (d)(2) encompasses “any dramatic, literary, musical, political or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.” The phrase “including, but not limited to” in section 425.17, subdivision (d)(2) is a term of enlargement, indicating the Legislature intended the provision to apply to items not listed. (*Major v. Silna, supra*, 134 Cal.App.4th at p. 1495; *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1068.) Nothing in section 425.17, subdivision (d)(2) limits the “work” to personal works of the kind subject to copyright protection. (*Major v. Silna, supra*, 134 Cal.App.4th at p. 1495, fn. 5 [no reference to copyright principles in the language of §425.17 and its legislative history].) We conclude defendant’s action falls outside the public interest exception to section 425.16 because the monument is a political work under section 425.17, subdivision (d)(2).

B. Special Motion to Strike Under Section 425.16

Section 425.16, subdivision (b)(1) states, “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” The court must engage in a two-step process when determining a special motion to strike. First, the moving party must make a threshold *prima facie* showing that

the challenged cause of action is one “arising from” the moving party’s actions in furtherance of the right of petition or free speech. (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477; *Flatley v. Mauro*, *supra*, (2006) 39 Cal.4th 299, 314; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).) Second, if the court finds such a showing has been made, the burden shifts to plaintiff to establish a probability of prevailing on the merits. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 477; *Flatley v. Mauro*, 39 Cal.4th at p. 314; *Equilon*, *supra*, 29 Cal.4th at p. 67.)

We review de novo the trial court’s ruling on a special motion to strike. (*Flatley v. Mauro*, *supra*, 39 Cal.4th at pp. 325-26; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) In determining the special motion to strike, “the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16 subd. (b)(2); *Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 326; *Soukup v. Law Offices of Herbert Hafif*, *supra*, 39 Cal.4th at p. 269 fn. 3.) But as explained by our Supreme Court, we do not weigh the competing evidence: “[W]e neither “weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant’s evidence only to determine if it has defeated that submitted by plaintiff as a matter of law.” (*Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 326; *Soukup v. Law Offices of Herbert Hafif*, *supra*, 39 Cal.4th p. 269 fn. 3; accord *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

Plaintiffs argue section 425.16 is inapplicable to lawsuits that challenge government action that violate constitutional, statutory, regulatory, common law or contractual rights. In

support of this proposition, plaintiffs rely on *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 72-74; *City of Alhambra v. D'Ausillio* (2011) 193 Cal.App.4th 1301, 1303-1304; *USA Waste of California v. City of Irwindale* (2010) 184 Cal.App.4th 53, 66; *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1219-1220; *City of Riverside v. Stansbury* (2007) 155 Cal.App.4th 1582, 1585; and *Santa Monica Rent Control Bd. v. Pearl Street* (2003) 109 Cal.App.4th 1308, 1318. Plaintiffs' reliance is misplaced. The cases cited by plaintiffs do not exempt from section 425.16 all actions that challenge governmental constitutional, statutory or contractual violations. Rather, these cases analyzed the first prong of section 425.16 and concluded the claims at issue did not arise from defendants' protected activities. Where claims against a government entity are based on that entity's free speech or petitioning activity, the action is subject to a special motion to strike under section 425.16. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17["[W]e believe it is clear, in light of both the language and purpose of California's anti-SLAPP statute, that the statutory remedy afforded by section 425.16 extends to statements and writings of governmental entities and public officials on matters of public interest and concern . . ."]; *County of Riverside v. Public Employment Relations Bd.* (2016) 246 Cal.App.4th 20, 31; *USA Waste of California v. City of Irwindale*, *supra*, 184 Cal.App.4th at p. 66.) As we discuss below, plaintiffs' causes of action arise from defendant's protected activity and thus are subject to section 425.16.

1. “Arising From” Any Act in Furtherance of Right to Petition or
Free Speech

Discussing the first prong of section 425.16, our Supreme Court explained: “The statutory phrase, ‘cause of action . . . arising from’ means simply that the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of the right to petition or free speech. [Citation.] [T]he critical point is whether the plaintiff’s cause of action itself was based on an act in furtherance of the defendant’s right of petition or free speech. [Citations.] ‘A defendant meets this burden by demonstrating that the act underlying the plaintiff’s cause fits one of the categories spelled out in section 425.16, subdivision (e). . . .’” (*City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78.) Section 425.16, subdivision (e) states: “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

In determining whether a cause of action arises from any act in furtherance of the right of petition or free speech, we look at “the gravamen or principle thrust” of the action. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 477; *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 269.) Our Supreme Court has stated: “The anti-SLAPP statute’s definitional focus is not on the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92; accord *Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 477.) There is no requirement that defendant prove the suit was intended to chill its speech or actually had that affect. Our Supreme Court explained: “[W]e held that the plain language of the ‘arising from’ prong encompasses any action based on protected speech or petitioning activity as defined in the statute (*Navellier v. Sletten* [, *supra*, 29 Cal.4th at pp.] 89-95), rejecting proposals that we judicially engraft the statute with requirements that defendants moving thereunder also prove the suit was intended to chill their speech (*Equilon*, *supra*, 29 Cal.4th p. 58) or actually had that effect. (*City of Cotati v. Cashman* [, *supra*, 29 Cal.4th at p.] 75).” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734.)

Plaintiffs argue the trial court erred by finding the acts underlying plaintiffs’ claims fit the categories spelled out in section 425.16, subdivisions (e)(1) through (e)(4). They maintain defendant did not prove plaintiffs’ causes of action arose from constitutionally protected speech or petitioning activity. Plaintiffs contend they are not challenging the validity of the city council’s remarks or the accuracy of the plaque’s language. They argue their claims are only based on defendant’s unconstitutional

interference with the federal government's foreign affairs power and violations of the California Constitution and the Glendale Municipal Code. Plaintiffs assert their claims advance the rights of Japanese Americans to be free of stigmatization. They argue the plaque's language is incidental or collateral to the claim and serves only as evidence that defendant's action are unconstitutional. We disagree.

Section 425.16, subdivision (e)(3) protects "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." Further, section 425.16, subdivision (e)(4) encompasses "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Permanent monuments displayed on public property represent government speech. (*Pleasant Grove City v. Summum* (2009) 555 U.S. 460, 470-472; accord *Walker v. Texas Div., Sons of Confederate Veterans, Inc.* (2015) 135 S.Ct. 2239, 2247 (*Walker*).) Here, the gravamen of the complaint is plaintiffs' objections to the language inscribed on the Comfort Women monument and the monument's placement in a city park. In effect, plaintiffs are challenging the government message conveyed by the monument. (*Pleasant Grove City v. Summum, supra*, 555 U.S. at p. 472 [municipality's acceptance and placement of monument in public park constitute government speech]; accord *Walker, supra*, 135 S.Ct. at pp. 2247-2248.) The second amended complaint alleges defendant's approval and installation of the public monument constitute a foreign policy transaction that falls under the foreign affairs field preemption. Further, the second amended complaint alleges the city council's failure to approve the plaque's language

violates the Glendale Municipal Code. Likewise, the state equal protection and privileges and immunities causes of action arise from plaintiffs' objections to the language on the monument's plaque. The second amended complaint alleges the monument's language and its placement in Central Park denies plaintiffs the equal protection and privileges and immunities on the same terms as non-Japanese citizens. In particular, the second amended complaint alleges plaintiffs are offended by the Comfort Women monument and avoid the adjacent adult recreation center. As the trial court observed, "It is clear that it is the message conveyed by the monument and plaque that offends plaintiffs; had the monument contained a different message or no message at all, plaintiffs would have no complaint." Based on the foregoing, we conclude defendant have met its burden of showing it engaged in protected conduct under section 425.16, subdivisions (e)(3) and (e)(4). Having reached this conclusion, we need not discuss whether defendant engaged in protected activity under section 425.16, subdivisions (e)(1) and (e)(2).

2. Probability of Prevailing on the Merits

Once defendant has shown that the action arose from its exercise of free speech or petition rights, the burden shifts to plaintiffs to establish a probability of prevailing on the merits. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 477; *Flatley v. Mauro*, 39 Cal.4th at p. 314; *Equilon*, *supra*, 29 Cal.4th at p. 67.) Plaintiffs must state and substantiate a legally sufficient claim to establish a probability of prevailing on the claims. (§ 425.16 subd. (b)(1); *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056; *Wilson v. Parker, Covert & Chidester*, *supra*, 28 Cal.4th at p. 821.) Our Supreme Court explained: "Put another way, the plaintiff 'must demonstrate that the complaint is both legally

sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by plaintiff is credited.’ [Citations.]” (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1056 quoting *Wilson v. Parker, Covert & Chidester, supra*, 28 Cal.4th at p. 821.)

Plaintiffs argue the trial court improperly weighed the evidence and erroneously found they did not meet their burden of showing minimal merits on their causes of action. Plaintiffs contend the trial court erred by relying on the federal district court’s ruling of the foreign affairs preemption claim. Plaintiffs also claim the trial court improperly weighed the evidence and made inferences in favor of defendant. We need not discuss these contentions because the trial court’s ruling on a special motion to strike is subject to independent review. (*Flatley v. Mauro, supra*, 39 Cal.4th at pp. 325-26; *Soukup v. Law Offices of Herbert Hafif, supra*, 39 Cal.4th at p. 269, fn. 3.)

a. Foreign Affairs Preemption Claim

Plaintiffs challenge the trial court’s dismissal of their first cause of action for unconstitutional interference with the federal government’s foreign affairs power. They argue defendant’s actions are preempted under the foreign affairs doctrine pursuant to the supremacy clause. (See U.S. Const. art. VI, cl. 2 [“This Constitution, and the Laws of the United States which shall be made in Pursuance therefor; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.”]; *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372; *Movsesian v.*

Victoria Versicherung AG (9th Cir. 2012) 670 F.3d 1067, 1069 (*Mousesian*).)

A state law that intrudes on the foreign affairs is preempted under either conflict preemption or field preemption. (*American Ins. Assn. v. Garamendi* (2003) 539 U.S. 396, 418-419 (*Garamendi*); *Mousesian, supra*, 670 F.3d at p. 1071.) Under conflict preemption, a state law must yield if it conflicts with an express federal foreign policy. (*Garamendi, supra*, 539 U.S. at p. 421; *Mousesian, supra*, 670 F.3d at pp. 1071-1072; *Von Saher v. Norton Simon Museum of Art at Pasadena* (9th Cir. 2010) 592 F.3d 954, 960 (*Von Saher*).) Under field preemption, a state law is preempted if it intrudes on a matter of foreign affairs without addressing a traditional state responsibility. (*Garamendi, supra*, 539 U.S. at p. 419 & fn. 11; *Mousesian, supra*, 670 F.3d at p.1072.) But field preemption only applies if the state law has more than “some incidental or indirect effect in foreign countries.” (*Zschernig v. Miller* (1968) 389 U.S. 429, 434; *Mousesian, supra*, 670 F.3d at p.1072.)

Plaintiffs contend defendant’s installation of the monument and plaque disturbs foreign relations and is outside the traditional area of municipal responsibility. As evidence, plaintiffs rely on then Mayor Weaver’s October 1, 2013 letter to Mayor Noda of Higashiosaka, Japan. In the letter, Mayor Weaver wrote, “I believe this matter is an international one between Japan and South Korea and the City of Glendale should not be involved on either side.” Plaintiffs also rely on city council member Zareh Sinanyan’s comments at the city council meeting concerning *Mousesian*. Plaintiffs argue field preemption requires defendant to yield to the federal government’s command of foreign affairs especially where there is an absence of local

government interest related to the comfort women issue. Plaintiffs contend even purely expressive conduct is preempted by the federal government's foreign affairs power.

Defendant's approval and placement of the monument in a public park is not preempted by the foreign affairs doctrine. Plaintiffs object to the following language inscribed on the monument: "In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945. [¶] And in celebration of proclamation of 'Comfort Women Day' by the City of Glendale on July 30, 2012, and of passing of House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibilities for these crimes. [¶] It is our sincere hope that these unconscionable violations of human rights shall never recur. [¶] July 30, 2013." By placing the Comfort Women monument in a city park, defendant conveys its position on the Comfort Women issue. The Comfort Women monument is not an exercise of governmental power but a declaration of principle. (*Alameda Newspapers v. City of Oakland* (9th Cir. 1996) 95 F.3d 1406, 1414.) And as the second amended complaint admits, defendant's position is consistent with House Resolution 121 passed by the United States Congress on July 30, 2007. Thus, there is no conflict preemption because the language on the Comfort Women monument does not conflict with any federal foreign policy. (Cf. *Garamendi*, *supra*, 539 U.S. at p. 421 [California insurance statute preempted because it conflicted with presidential foreign policy]; *Crosby v. National Foreign*

Trade Council, supra, 530 U.S. at pp. 366, 386 [Massachusetts statute barring state entities from buying goods or services from any person doing business with Burma is subject to conflict preemption].)

Furthermore, there is no field preemption because the monument's language is expressive conduct that has, at most, an incidental or indirect effect on foreign affairs. (*Zschernig v. Miller, supra*, 389 U.S. at p. 434; *Movsesian, supra*, 670 F.3d at p.1072.) In addition, field preemption is inapplicable because defendant does not seek to regulate or conduct foreign affairs. (Cf. *Zschernig v. Miller, supra*, 389 U.S. at pp. 430-431 [Oregon probate statute subject to field preemption where it prohibited inheritance by nonresident aliens unless foreign heirs could take the property without confiscation by their home country and United States citizens had reciprocity rights of inheritance]; *Movsesian, supra*, 670 F.3d at pp. 1069, 1076 [field preemption applied to California statute allowing Armenian Genocide victims and their heirs to bring insurance claims and extending statute of limitations]; *Von Saher, supra*, 592 F.3d at pp. 957, 963-967 [California statute which extended statute of limitations for actions seeking recovery of Holocaust-era art is subject to foreign affairs field preemption].) We conclude plaintiffs have not met their burden of establishing a probability of prevailing on their claim for unconstitutional interference with foreign affairs power.

b. Municipal Code Violation Claim

Glendale's Code of Ordinances section 2.04.140 states, "In all matters and things not otherwise provided for in this chapter, the proceedings of the council shall be governed under Robert's Rules of Order, revised copy, 1952 Edition." The second amended complaint alleges: "Pursuant to Robert's Rules of Order, to

introduce a new piece of business or propose a decision or action, a motion must be made by a group member. (Art. I, Sec. 4.) A second motion must then also be made. (Art. I, Sect. 5.) And after limited discussion, the group then votes on the motion. (Art. I, Sec. 7 & 9.) A majority is required for the motion to pass. (*Id.*)” Robert’s Rules of Order is a parliamentary guide adopted by legislative bodies to transact their affairs in an orderly fashion. (*Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 96.) The rules of parliamentary practice are procedural and their strict observance is not mandatory. (*Ibid.*) Thus, a failure to observe a parliamentary rule is not jurisdictional and will not invalidate a city council’s action which is otherwise in conformity with charter requirements. (*Ibid.*)

Plaintiffs argue the trial court erred in dismissing their second cause of action for violation of the municipal code. Plaintiffs allege the Comfort Women monument was not properly approved by the city council pursuant to section 2.04.140 of the Glendale Municipal Code. Plaintiffs present evidence the plaque’s language was not discussed when the city council approved the monument. Plaintiffs claim the city council’s failure to vote on the plaque’s content violates Robert’s Rules of Order.

The city council followed the parliamentary rules when it voted on the Comfort Women monument. Council member Quintero made a motion to approve “the installation of a Korean Sister City ‘Comfort Woman’ Peace Monument within the newly dedicated Sister City area adjacent to the Adult Recreation Center at Central Park, as shown and described in the Report to Council dated July 9, 2013.” The motion was seconded by council member Sinanyan and passed by a vote of four to one. Although

the city council did not approve the specific language inscribed on the monument's plaque at the July 9, 2013 special meeting, it did so later by voting to defend the instant action. Furthermore, the Glendale Charter does not require defendant to review every detail of the monument before accepting it. (Charter, Art. III, § 2, ¶ 18 ["Without in any way or to any extent limiting or curtailing the powers hereinbefore conferred or mentioned, and for the purpose of removing all doubt concerning the exercise of powers thereafter expressly mentioned, the City of Glendale shall have power: . . . [¶] 18. Devises, Bequests, Gifts and Donations. To receive devises, bequests, gifts and donations of all kinds of property, in fee simple, or in trust, for charitable or other purposes and to do all acts necessary to carry out the purposes of such devises, bequests, gifts and donations"]) Plaintiffs have not shown a probability of prevailing on their second cause of action for violation of the municipal code.

c. Equal Protection Claim

The equal protection clause of the California Constitution guarantees, "A person may not be . . . denied equal protection of the laws." (Cal. Const., art. I, § 7, subd. (a).) In *Darces v. Woods* (1984) 35 Cal.3d 871, 885, our Supreme Court explained: "The guarantees of equal protection embodied in the Fourteenth Amendment of the United States Constitution and article I, section 7 of the California Constitution 'compel[] recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.' [Citations.] 'This principle, of course, does not preclude the state from drawing any distinctions between different groups of individuals, but does require that, at a minimum, classifications which are created bear a rational relationship to a legitimate public

purpose.’ [Citation.] However, this deferential standard is inapplicable “‘in cases involving ‘suspect classifications’ or touching on ‘fundamental interests’” [Citation.] In such cases ‘the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that distinctions drawn by the law are *necessary* to further its purpose.’ [Citation.]” (Accord, *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253; *Butt v. State of California* (1992) 4 Cal.4th 668, 685-686 “[H]eightedened scrutiny applies to State-maintained discrimination whenever a disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest.”].) The state equal protection clause applies to laws that explicitly discriminate between groups of people. (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 644; *Sanchez v. State of California* (2009) 179 Cal.App.4th 467, 487.) In addition, the state equal protection clause applies to laws that, although neutral on their face, in operation have a disparate impact on certain groups. (*Ibid.*) We consider federal cases but are not bound by such decisions in interpreting the reach of the state equal protection safeguards. (*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 469.)

Plaintiffs contend the language on the plaque differentiates people of Japanese heritage from the rest of the population. They assert the plaque accuses Japan, and by foreseeable extension and association, its people of “unconscionable violations of human rights” for women “coerced into sexual slavery” during the war. We disagree. The plaque states in part, “In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines,

Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945.” The Comfort Women monument recognizes all comfort women, including Japanese women, who were removed from their homes and coerced into sexual slavery. The plaque identifies the Imperial Armed Forces of Japan as the perpetrators of crimes against comfort women between 1932 and 1945. The statement does not single out people of Japan or Japanese Americans. The plaque adds, “And in celebration of proclamation of ‘Comfort Women Day’ by the City of Glendale on July 30, 2012, and of passing of House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibilities for these crimes. [¶] It is our sincere hope that these unconscionable violations of human rights shall never recur.” Urging the Japanese Government to accept historical responsibility on the comfort women issue is not a statement that discriminates against Japanese people. The Comfort Women plaque does not create a racial classification that discriminates against people of Japanese heritage.

Plaintiffs also argue the city council’s actions demonstrate discriminatory intent. Plaintiffs point to emails and statements from local residents opposed to the Comfort Women monument as evidence defendant knew the monument would cause racial tension between the local Korean and Japanese communities. At the July 9, 2013 special meeting, the city council heard from local residents who objected to the Comfort Women monument. But the mere fact that the city council is aware of opposition to the Comfort Women monument is not sufficient evidence of discriminatory intent. Defendant has the right to accept

privately financed and donated monuments that convey a particular government message. (*Pleasant Grove City v. Summum, supra*, 555 U.S. at pp. 470-471.) The city is not required to adopt or embrace a particular message associated with a privately donated monument. (*Id.* at pp. 473-474.) The United States Supreme Court observed, “Even when a monument features the written word, the monument may be intended to be interpreted, and may in fact be interpreted by different observers, in a variety of ways.” (*Id.* at p. 474.) By accepting a monument, the government entity is not endorsing a specific meaning by a particular donor. (*Id.* at pp. 476-477.) Moreover, the message conveyed by the monument may change over time. (*Id.* at p. 477.) Here, the parties have different interpretations of the message conveyed by the Comfort Women plaque. But differences in opinion as to the monument’s message is not evidence of discriminatory intent. Furthermore, plaintiffs present no evidence to suggest the city council’s approval of the Comfort Women monument was motivated by discriminatory intent. To the contrary, at the July 9, 2013 meeting, several council members praised Japan and its people and indicated the monument was not meant to humiliate or dishonor Japanese people. Various council members explained their support for the monument was based on moral support of comfort women.

Plaintiffs further contend the Comfort Women monument has a disparate impact on Japanese American residents. As evidence, plaintiffs rely on the declarations from Ms. Gingery, Mr. Naoki and Mr. Mera. The individual plaintiffs feel alienated, offended, humiliated and saddened by the monument. Plaintiffs state they can no longer use the services offered at the adult recreational center because it is adjacent to the Comfort Women

monument. But the fact that plaintiffs find the monument offensive is insufficient by itself to support an equal protection claim. (See *Freedom from Religion Foundation, Inc. v. City of Warren* (6th Cir. 2013) 707 F.3d 686, 698 [city’s refusal to add Winter Solstice sign to holiday display, which included nativity scene, was not disparate treatment].)

Further, plaintiffs argue laws that stigmatize a particular class, even when neutrally drawn violate equal protection of the laws, citing *Parr v. Municipal Court* (1971) 3 Cal.3d 861, 863-864 (*Parr*). But *Parr* is easily distinguishable from the present case. In *Parr*, the city adopted an the ordinance that made it unlawful for any person to climb any tree, sit on sidewalks or steps, or lie or sit on any lawns. (*Parr, supra*, 3 Cal.3d at p. 862.) The declaration of urgency that accompanied the facially neutral ordinance singled out hippies as an unsanitary and undesirable social group. (*Id.* at p. 865.) Our Supreme Court held the discriminatory purpose underlying the ordinance violated the equal protection clause of the Fourteenth Amendment. (*Id.* at p. 868.) Here, there is no similar declaration or any other evidence showing the city council was hostile towards people of Japanese heritage. Plaintiffs have failed to establish a probability of prevailing on their third cause of action for violation of the state equal protection clause.

d. Privileges and Immunities Claim

Plaintiffs argue the trial court erred in dismissing their claim for violation of the privileges and immunities clause. The privileges and immunities clause of the California Constitution provides, “A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” (Cal. Const., art. I, § 7, subd. (b).) Legislation that

favors one class of citizens over another violates the privileges and immunities clause if the classification of citizens is unreasonable and arbitrary. (*City & County of San Francisco v. Flying Dutchman Park* (2004) 122 Cal.App.4th 74, 87; *Durham v. City of Los Angeles* (1979) 91 Cal.App.3d 567, 574.) As we discussed above, the Comfort Women monument does not create a racial classification that singles out people of Japanese heritage. Accordingly, plaintiffs have failed to show a probability of prevailing on their fourth cause of action for violation of the privileges and immunities clause under the State Constitution.

C. No Due Process Violation

Plaintiffs argue the trial court violated their due process rights. They claim the trial court overstepped its role as trier of fact by advocating for defendant and considering evidence outside the record. Plaintiffs contend it was improper for the trial judge to visit the Comfort Women statue, both before and after litigation. At the outset of the February 23, 2015 hearing, the trial court informed the parties, “I’ll just indicate, the court has actually seen the statue itself, both prior to the case I’ve been aware of the statue as to the – I believe it’s Central Park, Glendale, more or less Brand and Colorado.” It is not clear from the record that the trial judge visited the Comfort Women monument after plaintiffs filed their lawsuit.

Assuming the trial court viewed the monument during litigation, plaintiffs did not object to the investigation at the hearing and thus forfeits this issue. (*Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 215 (*Today’s Fresh Start*); *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 788.) Even if the issue is not forfeited, plaintiffs do not explain what additional information

the trial judge obtained when he visited the Comfort Woman monument. Plaintiffs included the text of the plaque in their second amended complaint and a photograph of the Comfort Women monument was admitted into evidence as part of the record. Plaintiffs fail to show how the trial court's viewing of the Comfort Women monument affected the ruling on the section 425.16 motion.

Plaintiffs also assert their due process rights were violated because the trial court visited another monument. Plaintiffs claim they were "ambushed" by the trial court and asked to refute evidence that was irrelevant and not part of the record. At the February 23, 2015, hearing, the trial court showed the parties another plaque located in another city park on a courtroom screen. The trial court stated: "Let me show you another plaque the court has uncovered itself recently. Tell me your thoughts on this. [¶] [¶] This is a plaque that sits out in Grand Park. It's 50 meters from the courthouse, between our courthouse and the Hall of Administration. It says: 'In memory of the seven million Ukrainians, victims of Russian Communism who lost their freedom, property and life by order of the Soviet Government from 1932 to 1933. Genocide by starvation in the Ukraine,' and it was put up by, apparently, the Board of Supervisors. And it sits out there. [¶] Would this be an equally unconstitutional plaque?"

As a preliminary matter, plaintiffs forfeited this issue by failing to object below. (*Today's Fresh Start*, *supra*, 57 Cal.4th at p. 215; *Niles Freeman Equipment v. Joseph*, *supra*, 161 Cal.App.4th at p. 788.) Moreover, plaintiffs fail to show the trial court considered and relied on this evidence in its ruling on the section 425.16 motion. The trial court's visit of and questions

concerning another plaque do not violate plaintiffs' due process rights.

D. No Judicial Bias

Plaintiffs contend the trial court exhibited bias against them. They cite to the following sentence in the trial court's decision as evidence of bias, "There can be no legitimate dispute that the Japanese government engaged in a horrendous crimes against the Comfort Women prior to and during World War II." Plaintiffs interpret this introductory line as casting blame on Japanese people for World War II crimes. Not so. The introductory statement discusses the Japanese government's role in crimes against comfort women. It does not blame Japanese or Japanese Americans such as plaintiffs for the crimes committed against comfort women. The trial court's expression of opinion based on the evidence does not establish judicial bias. (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312; *Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 786; *Moulton v. Niguel Water District v. Colombo* (2003) 111 Cal.App.4th 1210, 1219-1220.) Further, plaintiffs did not object to the introductory statement, which was in the trial court's tentative and final decisions, or request the trial judge's recusal based on bias. Thus, plaintiffs forfeit this claim on appeal. (*Tri Counties Bank v. Superior Court* (2008) 167 Cal.App.4th 1332, 1337-1339; *Moulton v. Niguel Water District v. Colombo, supra*, 111 Cal.App.4th at p. 1218.)

Plaintiffs also argue the trial court demonstrated bias by refusing to consider the footnotes in their opposition to the section 425.16 motion. The trial court explained: "Normally, the motions and oppositions on an anti-SLAPP motion are limited to 15 pages. (See CRC rule 3.1113(d).) At the parties' request, the Court allowed each party up to a maximum of 20 pages for their

pleadings. (Minute Order, 1/7/15.) The Court notes that both parties – but particularly plaintiffs – have included substantive, extended, single-spaced footnotes in their memoranda in an apparent attempt to circumvent the extended 20-page limit. The Court has not considered the points raised in these footnotes.” The trial court did not exhibit bias by ignoring the parties’ footnotes. A trial court’s numerous rulings against a party—even when erroneous— do not demonstrate bias, especially when the rulings are subject to review. (*People v. Pearson, supra*, 56 Cal.4th at p. 447; *Nevarez v. Tonna, supra*, 227 Cal.App.4th at p. 786.) Furthermore, plaintiffs fail to show how the trial court favored defendant when the trial court ignored the legal arguments made in both parties’ footnotes. Plaintiffs’ contentions of judicial bias are without merit.

IV. DISPOSITION

The judgment is affirmed. Defendant, City of Glendale, shall recover their costs on appeal from plaintiffs, Koichi Meria, Masatoshi Naoki and GAHT-US Corporation.

TURNER, P.J.

We concur:

BAKER, J.

RAPHAEL J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.